

FARGO CITY COMMISSION AGENDA
Monday, November 17, 2008 - 5:00 P.M.

CITY COMMISSION MEETINGS ARE BROADCAST LIVE ON TV FARGO (Channel 99). They are rebroadcast at 7 p.m. each Thursday and again at 8:00 a.m. each Saturday and are also included in our video archive at www.cityoffargo.com/commission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, November 3, 2008).

*** Consent Agenda - Approve the Following ***

- a. 2nd reading, waive reading and final adoption of the following rezoning Ordinances; 1st reading, 11/3/08:
 - (1) Certain Parcels of Land Lying in West Park Addition.
 - (2) Certain Parcels of Land Lying in Town Square Village Addition.
 - (3) Certain Parcels of Land Lying in Section 3, Township 138 North, Range 49 West, Cass County, North Dakota.
- b. Computer surplus equipment donation recommendation.
- c. Receive and file Summons and Complaint in the matter of Joshua Oscar Calloway vs. the City of Fargo.
- d. Receive and file Notice of Appeal from Decision of Local Governing Body filed by Fred Hector vs. the City of Fargo.
- e. Resolution Authorizing the Issuance and Sale of \$1,640,000 Sales Tax Revenue Bonds, Series 2008C and Resolution Authorizing the Amendment thereof.
- f. Receive and file Year to Date – Budget to Actual Report for October 2008.
- g. Letter of engagement with AON Consulting for implementation of a Wellness Program.
- h. Contract amendment with the North Dakota Department of Human Services for the Refugee Program (Contract #600-07012, Amendment "A").
- i. Health Department budget adjustment and contract with the North Dakota Department of Health for the Women's Way Program (CFDA #93.919).
- j. Certification of Award for the Juvenile Accountability Block Grant Award (JAIBG).
- k. Application filed by Michael and Marcia Polczinski for a 5-year property tax exemption for improvements made to a building at 920 4th Avenue South.
- l. Application filed by Muskies, Inc. F-M Chapter for a raffle on 2/5/09.

Page 2 Change Orders for the Main Library: M-5 for an increase of \$3,581 and G-7 for an increase of \$6,325.

- n. Contracts with the following companies for furniture, fixtures and equipment for the Main Library: Brown & Saenger; Embury, Ltd.; Hannaher's, Inc.; Jones Library Sales, Inc.; Function Furniture; Christianson's Business Furniture, Inc.; and MBA Development Company d/b/a InterOffice.
- o. Junked vehicle removal contract with Hazer's Auto and Truck Salvage, Inc. for 2009.
- p. Contract with the Metropolitan Council of Governments to place one traffic counting and detective device at University Drive and 18th Avenue South.
- q. Contract amendment with Kadrmas, Lee & Jackson in the amount of \$12,500 for services in connection with Project No. 5798.
- r. Contract amendment with Advanced Engineering and Environmental Engineering Services in the amount of \$16,000 for services in connection with Project No. 5799.
- s. Contract Amendment No. 1 with Advanced Engineering and Environmental Engineering Services in the amount of \$164,600 for services in connection with Project No. 5725.
- t. Bid award for the Shanley recycling drop site and Lease Agreement with the Diocese of Fargo.
- u. Agreement Regarding Storm Sewer Easement with Fred M. Hector, Jr. for property along 42nd Street South.
- v. Land Use Permit with Northern States Power Company in connection with a public bike path along 45th Street South (Improvement District No. 5765).
- w. Purchase Agreement with Prairie Grove, Inc. in connection with the reconstruction of 52nd Avenue South (Improvement District No. 5314).
- x. Encroachment Agreement with Prairie Grove, Inc. for property on Prairie Grove Avenue South at 25th Street.
- y. Advertise for bids for Project No. 5726.
- z. Contract and bond for Project No. 5799.
- aa. Bills.
- bb. Contract and bond for Improvement District No. 5773.

*** Regular Agenda ***

- 1. Appeal from a Board of Adjustment decision to approve construction of a building at 12th Avenue North.
 - a. Recommendation to schedule a hearing for 5:15 p.m. on December 1, 2008.

Public Hearings - 5:15 p.m.:

- a. Application filed by Clinical Supplies Management, Inc. for a new or expanding industry property tax exemption for an expansion to their operation at 342 42nd Street South where the applicant is engaged in clinical trial supply services for biotechnology and pharmaceutical companies.
- b. Petition requesting a zoning change from NC, Neighborhood Commercial to LC, Limited Commercial with a Conditional Overlay on property located at 1117 and 1155 13th Avenue South; however, on 10/8/08 the Planning Commission continued their hearing to 11/12/08.
 - (1) Approval recommended by the Planning Commission on 11/12/08.
 - (2) 1st reading of rezoning Ordinance.

PLEASE NOTE: Agenda items for the December 1, 2008 City Commission meeting must be submitted to the City Commission Office no later than noon on WEDNESDAY, November 26, 2008.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 241-1310 or TDD 241-8258. Please contact us at least three business days in advance of public meetings to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo Web site at www.cityoffargo.com/commission



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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS
FROM: PLANNING DIRECTOR JIM GILMOUR *JG*
DATE: NOVEMBER 12, 2008
RE: APPEAL OF BOARD OF ADJUSTMENT DECISION

William Rakowski has appealed the decision to approve the construction of a building at 12th Avenue North. Mr. Rakowski claims that the developer of the building, FM City Development, has not complied with Land Development Code parking requirements.

The Planning and Development Department brought the appeal to the Planning Commission because the Zoning Administrator reviews the parking as part of the Site Plan Review process, and decisions of the Zoning Administrator are appealable to the Planning Commission.

Mr. Rakowski argues that the Building Official should have disregarded the Planning Commission approval of an Alternative Access Plan that reduced the parking requirements, and should have rejected the building permit because of the number of required parking spaces.

As background information, an Alternative Access Plan which reduced the number of required parking spaces was approved by the Planning Commission. This approval could have been appealed to the City Commission within 10 days of the Planning Commission action. Mr. Rakowski did not file an appeal within that 10 day period.

Both the Planning Commission and Board of Adjustment have reviewed the issue of jurisdiction of this matter. The Planning Commission determined they have jurisdiction over the appeal. The Board of Adjustment also determined the Planning Commission has jurisdiction.

Mr. Rakowski has now appealed the Board of Adjustment Decision on jurisdiction to the City Commission. A copy of that appeal is enclosed for your information.

Recommended Motion: Receive the Appeal of the Board of Adjustment decision of jurisdiction, and schedule a hearing for December 1, 2008 at 5:15 p.m.



BEFORE THE FARGO CITY COMMISSION

William F. Rakowski,

Adjacent Landowner,

vs.

NOTICE OF APPEAL

City of Fargo, Inspections Department and/or
FM City Development, LLC,

Building Permit Holder & Issuer.

TO: The Fargo City Commission.

PLEASE TAKE NOTICE that the above named William F. Rakowski, the owner of property commonly referred to as 1424-1426 12th Avenue North, Fargo, North Dakota 58102, does hereby appeal to the Fargo City Commission under FMC § 20-0801(11), and any other applicable provision, from the Board of Adjustment's determination of October 28, 2008, that it did not have jurisdiction arising out of an appeal of an administrative decision authorizing issuance, and subsequent issuance of a building permit on August 25, 2008 [copies attached to the original Notice of Appeal to the Board of Adjustment], without the existence of all required conditions precedent set forth in FMC Article 20-07 [with specific reference to FMC § 20-0701(E)(4), all as more fully set forth in the correspondence from the undersigned directed to the City of Fargo's Building Inspector resulting from the owner's intent to use off-site parking to satisfy mandatory parking requirements {when the site is totally inadequate to meet all parking requirements}[copies attached to the original Notice of Appeal to the Board of Adjustment].

So as to assist the Fargo City Commission in understanding the issue(s), please be advised of the following:

- A. The Building Official performs a higher duty than merely passing on the sufficiency of building plan adherence to Fargo's building code – the Building Official is prevented from issuing a building permit without conformity “in all respects to the provisions of the Land Development Code and the building code.” Indeed, FMC § 20-0913(B) indicates this dual role apparently overlooked or ignored:

“The Building Official shall be responsible for conducting reviews to determine if intended uses, buildings or structures comply with all applicable regulations and standards, including the building code. The Building Official shall not issue a building permit

unless the plans, specifications and intended use of such building or structures or part thereof conform in all respects to the provisions of the Land Development Code and the building code.”

- B. Fargo’s Land Development Code was passed by ordinance – it has the force and effect of law. Under Fargo’s Land Development Code, the Off-Street and On-Site parking space requirements were established by way of specific ordinance requirement. FMC Article 20-07; specifically, FMC §20-0701(B). Under FMC § 20-0701(D), “Except as expressly stated in this section [§ 20-0701], all required off-street parking spaces must be located on the same lot as the principal use.” An “Alternative Access Plan” does not provide any opportunity to alter the ordinance’s on-site parking requirements because of the built-in limitation set forth in FMC § 20-0701(E)(4) which superimposes a higher standard for residential uses [and certain commercial uses]:

“Off-site parking may not be used to satisfy the off-street parking standards for residential uses (except for guest parking), restaurants, convenience stores or other convenience-oriented uses. Required parking spaces reserved for persons with disabilities may not be located off-site.”

- C. The City of Fargo is reminded there exists a definite distinction between an ordinance and a resolution of a governing body of a municipality – a resolution is not a law. Mitchell v. City of Parshall, 108 N.W.2d 12, 14-15 (N.D. 1961).
- D. Mini Mart, Inc., v. City of Minot, 347 N.W.2d 131, 137-138 (N.D. 1984) makes clear: “Section 40-11-09, N.D.C.C., is, in effect, a codification of the general rule that ‘a municipal ordinance cannot be amended or repealed by a mere resolution. To accomplish that result a new ordinance must be passed.’ (authorities cited).” In the context of the Fargo Planning Commission’s attempt to alter the on-site parking space requirements imposed by way of the City of Fargo’s ordinance – not even the Fargo City Commission could do so by resolution, how could the Fargo Planning Commission hope to do so?
- E. The City of Fargo’s legislative power cannot be delegated to the Fargo Planning Commission, or anyone else.¹ Once the City of Fargo passed ordinances establishing the off-street and on-site parking space requirements, no body other than the Fargo City Commission can change those quantitative requirements. In

¹ State ex rel. Rusk v. Budge, 105 N.W. 724, 727 (N.D. 1905); Attorney General Opinion identified as 1988 N.D. Op. Atty. Gen. 19, 1988 WL 483202 (N.D.A.G.).

essence, an ordinance cannot be changed except by another ordinance enacted in accordance with law. Mini Mart, Inc., v. City of Minot, 347 N.W.2d 131, 137-138 (N.D. 1984) makes clear: “Section 40-11-09, N.D.C.C., is, in effect, a codification of the general rule that ‘a municipal ordinance cannot be amended or repealed by a mere resolution. To accomplish that result a new ordinance must be passed.’ (authorities cited).”

If the Fargo City Commission consents to any other entity ignoring the ordinance by giving such other entity the discretion to alter the on-site parking requirements, such concept would be unconstitutional. To allow the Planning Commission, or the Board of Adjustment to perform the legislative function of the Fargo City Commission would be an unconstitutional delegation of legislative power. In re Garrison Diversion Conservancy District, 144 N.W.2d 82, 92 (N.D. 1966). The same situation exists with respect to the role of Building Official or any Planning Department/Planner – such power cannot legally exist.

Municipal regulatory schemes created by ordinance [in the instant case, Fargo’s building permit scheme] cannot be amended by any municipal body other than the Fargo City Commission, which must act by way of an ordinance to amend the off-street and on-site parking space requirements. Indeed, the existing off-street and on-site parking space requirements cannot be waived for residential spaces or certain types of commercial ventures as hereafter noted.

- F. As the prior act of the Fargo Planning Commission to ignore the City of Fargo’s ordinance was unlawful, it was a void act.
- G. For reasons unclear to the undersigned, the City of Fargo envelops Mr. Rakowski’s appeal with the Fargo Planning Commission, and then avoids its duty to provide the underlying documents to the Board of Adjustment. The City of Fargo did not even provide copies of the Notice of Appeal, and attachments to the Board of Adjustment – the City of Fargo is trying to hide documents from the duly designated appellate entity. FMC § 20-0910(F) requires that “(t)he Zoning Administrator or the official whose decision is being appeal shall transmit to the Board of Adjustment all papers constituting the record upon which the action appealed is taken.” Only the Board of Adjustment has jurisdiction in the appeal from the action of the Building Official. FMC § 20-0916.
- H. Please take notice that a written agreement for an off-site parking area in North Dakota State University’s “T” Lot which is “attested” to by the “owners of record” of “T” Lot and the “owners of record” of Lots Sixteen (16), Seventeen (17) and Eighteen (18), Block Fourteen (14), Kirkham’s 2nd Addition to the City of Fargo must exist according to FMC § 20-0701(E)(4)(d).

“Recordation of the agreement with the Register of Deeds must take place before issuance of a building permit for any use to be served by the off-site parking area.”

- I. Please be advised that no recordation of the agreement with the Cass County Recorder [formerly known as the Register of Deeds] yet exists, nor is it likely to ever occur because it would provide for private use of public lands which is generally prohibited by law.
- J. Moreover, the building permits were issued prior to the submission of the information deemed necessary by the Inspections Department of the City of Fargo.
- K. Please be further advised that FMC § 20-0701(E) provides:

“An Alternative Access Plan represents a proposal to meet vehicle parking and transportation access needs by means other than providing parking spaces on-site in accordance with the Off-Street Parking Schedule of Sec. 20-0701-B. Applicants who wish to provide fewer off-street parking spaces than required pursuant to Sec. 20-0701-B must secure approval of an Alternative Access Plan, in accordance with the standards and procedures of this section.”

The Planning Commission is not capable of granting a reduction unless there also exists an “Alternative Access Plan” that meets all ordinance qualifications to be considered an “Eligible Alternative”.

Under FMC § 20-0701(D)(2), there is a mandatory ordinance standard which provides for an “alternative to providing off-street parking spaces on the site of the subject development if the applicant demonstrates to the satisfaction of the decision-making body that the proposed plan will do at least as good of a job protecting surrounding neighborhoods, maintaining traffic circulation patterns and promoting quality urban design that would strict compliance with otherwise applicable off-street parking standards.” Under this ordinance, “bicycle parking” or “valet parking”, and presumptively, even parking in the NDSU Lot would be another “alternative” *provided the advanced, and approved plan, meets the ordinance’s mandatory standard(s)*.

The City Commission should be aware this applicant proposed a plan for *off-street and off-site parking* on the NDSU “T” Lot. Your ordinance(s), depending on actual use, would have required, at a minimum, 78 off-street and on-site parking spaces, and a maximum, 103 off-street and on-site parking spaces.

Thirty-three (33) off-street and on-site parking spaces is a very substantial reduction from either higher standard – **SET BY ORDINANCE.**

The City of Fargo’s Staff Report did not accurately paraphrase the legal standards for acceptance of any Alternative Access Plan, but even if the Planning Commission was allowed to ignore the mandatory “Location of Required Parking” standard set forth in FMC § 20-0701(D)(1) [“Except as expressly stated in this section, all required off-street parking spaces must be based on the same lot as the principal use.”], it does not eliminate the ordinance requirements of FMC § 20-0701(E)(4) entitled, “Off-Site Parking” which has several other mandatory standards – seemingly ignored by the City of Fargo, its Boards, and its employees. For instance, FMC § 20-0701(E)(4)(a) specifically states that “(o)ff-site parking may not be used to satisfy the off-street parking standards for residential uses (except for guest parking), restaurants, convenience stores or other convenience-oriented uses.” **It appears the 40 mandatory residential living parking spaces CANNOT be located off-site under this ordinance – the City of Fargo blatantly ignored its own ordinance which forbids any attempt at reduction from the mandated 40 parking spaces – which have to be on-site and off-street.** As to the general retail parking spaces [from 38, and up to 63 parking spaces], this same law would forbid any attempt to reduce if used for restaurant or convenience store purposes.

Even if off-site parking spaces suffice, the Zoning Administrator serves as a place for submission of the “attested copy of the agreement between the owners of record” which will be capable of being recorded. This ordinance then provides: “Recordation of the agreement with the Register of Deeds must take place before issuance of a building permit for any use to be served by the off-site parking area.” **THIS HAS NOT HAPPENED! NO BUILDING PERMIT CAN BE ISSUED! THE IMPROPER ISSUANCE OF THE BUILDING PERMIT WAS APPEALED TO THE BOARD OF ADJUSTMENTS AND IT DECLINED TO ACT!**

If this planned use of NDSU’s “T” Lot is considered an alternative plan involving “Shared Parking” under FMC § 20-0701(E)(5), similar ordinance language exists which would also prohibit the issuance of a building permit. See, FMC 20-0701(E)(5) which requires compliance with “all of (the) following standards”, including the existence of a “shared parking analysis (being submitted) to the Zoning Administrator that clearly demonstrates the feasibility of shared parking (with mandatory report components).” Likewise, a “Shared Parking” plan requires a “written agreement among all owners of record (and) (a)n attested copy of the agreement between the owners of record must be

submitted to the Zoning Administrator for recordation on forms made available in the Planning Department. Recordation of the agreement with the Register of Deeds must take place before issuance of a building permit for any use to be served by the off-site parking area.” THIS HAS NOT HAPPENED! NO BUILDING PERMIT SHOULD HAVE BEEN ISSUED! THE IMPROPER ISSUANCE OF THE BUILDING PERMIT WAS APPEALED TO THE BOARD OF ADJUSTMENTS, AND IT IMPROPERLY DECLINED TO ACT!

As a further reminder, the ordinance requirement in the Land Development Code – FMC § 20-0913(B) forbids certain behavior by the Building Official:

“The Building Official shall not issue a building permit unless the plans, specifications and intended use of such building or structures or part thereof conform in all respects to the provisions of this Land Development Code and the building code.” [emphasis added]

Since the Land Development Code does not allow for any reduction of the mandatory 40 spaces for residential parking off-street and on-site – the Building Official violated the Land Development Code, and so did everyone working on behalf of the City of Fargo that has ignored this law. The appeal to the Board of Adjustment should have been heard. This body should issue its order requiring them to follow the law and hear the appeal.

Dated this 5th day of November, 2008.

GARAAS LAW FIRM



Jonathan T. Garaas
Attorneys for Rakowski/landowner
Office and Post Office Address:
DeMores Office Park
1314 23rd Street South
Fargo, North Dakota 58103-3796
Telephone: (701) 293-7211
North Dakota Bar ID#03080



29

ASSESSMENT DEPARTMENT

November 12, 2008

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application made by Clinical Supplies Management, Inc. for a New or Expanding Industry property tax exemption according to N.D.C.C. Chapter 40-57.1. The exemption requested is for an expansion to their operation at 342 42nd St. S. where the applicant is engaged in clinical trial supply services for biotechnology and pharmaceutical companies.

Notices to competitors have been published and the Tax Exempt Review Committee has met to consider this application. The application contains information regarding the projected value of the expansion and the nature of the jobs to be created.

The committee feels that this request meets the necessary criteria to be eligible for this exemption.

SUGGESTED MOTION:

Approval of a 5 year property tax exemption for the expansion portion of improvements at 342 42nd St. S. for Clinical Supplies Management, Inc.

Sincerely,

A handwritten signature in black ink that reads "Ben Hushka".

Ben Hushka
Tax Exempt Review Committee

Application For Property Tax Incentives For New or Expanding Businesses

Pursuant to N.D.C.C. Chapter 40-57.1

Project Operator's Application To Cass
City or County

RECEIVED
SEP 22 2008
FARGO ASSESSOR

*CHLOE
2008
10/16/08*

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

Identification Of Project Operator

1. Name of project operator Clinical Supplies Management, Inc.

2. Address of project 342 42nd Street South
City Fargo County Cass

3. Mailing address of project operator Same as above
City _____ State _____ Zip _____

4. Type of ownership of project
 Partnership Subchapter S corporation Individual proprietorship
 Corporation Cooperative Limited liability company

5. Federal Identification No. or Social Security No. 91-1765255

6. North Dakota Sales and Use Tax Permit No. 177635-00

7. If a corporation, specify the state and date of incorporation North Dakota - 1/21/97

8. Name and title of individual to contact Patty Arett, Accounting Manager or Don Berg, COO
202
Mailing address 342 42nd Street S.
City, State, Zip Fargo, ND 58103 Phone No. 701-235-8002

Project Operator's Application For Tax Incentives

9. Indicate the tax incentives applied for and terms. Be specific.

Property Tax Exemption **Payments In Lieu of Taxes**

5 _____ Number of years _____ Beginning year _____ Ending year

100 _____ Percent of exemption _____ Amount of annual payments (attach schedule if payments will vary)

10. Which of the following would better describe the project for which this application is being made:
 New business project Expansion of a existing business project

Description of Project Property

Page 13 Legal description of project real property

West Park 2ND S 293.57' OF LOT 8 BLK 4 **12-16-96 SPL FR 01-4012-00421-000

12. Will the project property be owned or leased by the project operator? Owned Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?
 Yes No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility? New construction Existing facility

If existing facility, when was it constructed? 1996

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application Sept 08

b. Description of project to be constructed including size, type and quality of construction

Expansion of current facility to add warehouse and production space to allow for increased capacity.

c. Projected number of construction employees during the project construction _____

14. Approximate date of commencement of operations for this project JAN. 1, 2009

BH
PER PERMIT AGREEMENT 11/2/09

15. Estimated market value of the property used for this project:

a. Land \$ _____

b. Existing buildings and structures for which an exemption is claimed \$ _____

c. Newly constructed buildings and structures when completed \$ 1,500,000

d. Total \$ 1,500,000

e. Machinery and equipment \$ _____

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) 

b. Eligible existing buildings and structures \$ _____

c. Newly constructed buildings and structures when completed \$ 75,000

d. Total taxable valuation of property eligible for exemption (Add lines b and c) \$ 75,000

e. Enter the consolidated mill rate for the appropriate taxing district 407.81

f. Annual amount of the tax exemption (Line d multiplied by line e) \$ 30,586

Description of Project Business

Page 14

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in: Ag processing Manufacturing Retailing
 Wholesaling Warehousing Services

18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

CSM is engaged in clinical trial supply services including primary & secondary packaging & labeling, storage & distribution and returns & reconciliation of clinical trial materials. CSM primarily serves biotechnology and pharmaceutical companies conducting clinical trials.

19. Indicate the type of machinery and equipment that will be installed

Shelving for warehouse, additional walk-in coolers/freezers, area for future bottling line, new generator and office furniture

20. Projected annual revenue, expense, and net income of the project for each year for the first five years.

Year	<u>See</u>	_____	_____	_____	_____
Annual revenue	<u>Attached</u>	_____	_____	_____	_____
Annual expense	_____	_____	_____	_____	_____
Net income	_____	_____	_____	_____	_____

21. Projected annual average number of persons to be employed by the project at the project location for each year for the first five years and the estimated annual payroll.

Year	<u>See</u>	_____	_____	_____	_____
No. of Employees	⁽¹⁾ <u>Attached</u>	_____	_____	_____	_____
	⁽²⁾ _____	_____	_____	_____	_____
Estimated payroll	⁽¹⁾ _____	_____	_____	_____	_____
	⁽²⁾ _____	_____	_____	_____	_____

(1) - full time
(2) - part time

Previous Business Activity

22. Is the project operator succeeding someone else in this or a similar business? Yes No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?
 Yes No
24. Has the project operator or any officers of the project received any prior property tax incentives? Yes No
If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

Property tax exemption was granted for 4733 Amber Valley Parkway through 12/31/08. This exemption was transferred to 342 42nd Street S. after our move to this building was complete.

Business Competition

Page 15
 25. Is any similar business being conducted by other operators in the municipality? Yes No

If YES, give name and location of competing business or businesses

Property Tax Liability Disclosure Statement

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it? Yes No

27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property? Yes No

If the answer to 26 or 27 is Yes, list and explain

Use Only When Reapplying

28. The project operator is reapplying for property tax incentives for the following reason(s):

- To present additional facts or circumstances which were not presented at the time of the original application
- To request continuation of the present property tax incentives because the project has:
 - moved to a new location
 - had a change in project operation or additional capital investment of more than twenty percent
 - had a change in project operators
- To request an additional annual exemption for the year of _____ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

Notice to Competitors of Hearing

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, Don Berg, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

 Signature CDO 16 Sept 2008
Title Date

In compliance with the Federal Privacy Act of 1974, Public Law 93-579, the disclosure of the individual's social security number on this form is mandatory pursuant to North Dakota Century Code §§ 40-57.1-03 and 40-57.1-07. An individual's social security number is used as an identification number by the Office of State Tax Commissioner for file control purposes and record keeping.

Certification of Governing Body (To be completed by the Auditor of the City or County)

The municipality shall, after granting any property tax incentives, certify the findings to the State Tax Commissioner and Director of Tax Equalization by submitting a copy of the project operator's application with the attachments. The governing body, on the _____ day of _____, 20____, granted the following:

Property Tax Exemption **Payments in lieu of taxes**

_____ Number of years _____ Beginning year _____ Ending year

_____ Percent of exemption _____ Amount of annual payments (Attach schedule if payments will vary)

Auditor

Five Year Estimated Projected Revenue, Expenses & Income related to Expansion

	2008		2009		2010		2011		2012	
	\$	%	Total	%	Total	%	Total	%	Total	%
Annual Gross Revenue	4,300,000	100%	5,900,000	100%	7,000,000	100%	8,500,000	100%	9,500,000	100%
Annual Expense	3,600,000	84%	4,600,000	78%	5,474,000	78%	6,623,540	78%	7,385,247	78%
Net Income	700,000	16%	1,300,000	22%	1,526,000	22%	1,876,460	22%	2,114,753	22%

Projected number of employees added related project

	2008		2009		2010		2011		2012	
	\$	#	\$	#	\$	#	\$	#	\$	#
# of employees (FT added)		8*		10		11		2		2
Estimate payroll for added FTE's	264,000		335,000		374,000		69,000		70,000	

* May be delayed due to space limitations until after expansion is complete

Breakdown of 2008 Employee Additions:

Initial Year Grid	# of Current Positions
2008 Projected Positions Added	8

2008 Projected New Positions by hourly salary category							
	\$7.50-\$9.00	\$9.01-\$11.00	\$11.01-\$13.00	\$13.01-\$15.00	Over \$15.00		Total
	0	0	0	2	2	4	8

4.5 (PATTY ARETT 10/21/08)

2 b

City of Fargo Staff Report			
Item No:		Date:	10-01-08 As amended on 11-03-08 and 11-14-08
Title:	Erskines Addition	Staff Contact:	Jim Hinderaker
Location:	1155 and 1117 13th Avenue South		
Owner(s)/Applicant:	Steven W. Stremick	Engineer:	N/A
Reason for Request:	Zoning Change		
Status:	Planning Commission Public Hearing		
Existing		Proposed	
Land Use:	Vacant residential neighborhood commercial structure and vacant residential structure	Land Use:	Office and parking lot
Zoning:	NC – Neighborhood Commercial	Zoning:	LC – Limited Commercial with Conditional Overlay
Uses Allowed:	NC – Neighborhood Commercial. Allows detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children, parks and open space, religious institutions, safety services, basic utilities, offices, and retail sales and service.	Uses Allowed:	LC – Limited Commercial. Allows colleges, community service, daycare centers of unlimited size, health care facilities, parks and open space, religious institutions, safety services, offices, off premise advertising signs, commercial parking, retail sales and service, self service storage, vehicle repair, limited vehicle service.
Maximum Density Allowed:	Dimensional standards of the adjacent zoning district apply	Maximum Density Allowed:	55% building coverage
Area Plans:	<p>This area is located within the Hawthorne Neighborhood. The Hawthorne Neighborhood Plan adopted in August 1999 main goal is to sustain the diverse mix of housing.</p> <p>According to Comprehensive Plan Policy Letter 118, land uses along 13th Ave S., west of 10th St S should be allowed to change to reduce the traffic friction with homes. The policy letter states that "Land use decisions on 13th Ave S between the River and 21st Street should strive to achieve a higher level of compatibility between the land use and traffic characteristics."</p>		
Schools and Parks:	The property is approximately 2,000 feet or less from three schools. Clara Barton, Agassiz and Carl Ben Eilsen.		
Staff Analysis			
<p>The subject properties are located at 1155 and 1117 13th Avenue South at the intersection of two arterials (University Drive and 13th Avenue South). 1155 13th Ave S is zoned NC – Neighborhood Commercial, is currently used as an office, and has operated as retail and service in the past. The lot is approximately 7650 square feet and contains a residential structure constructed in 1909 with the rear half of the property paved for parking. The property located at 1117 13th Avenue South is approximately 7550 square feet in size and is currently vacant. In addition, the property has two zone district designations. The southern 71 feet is zoned NC, Neighborhood Commercial and the balance of the property is zoned SR-3, Single-Family.</p> <p>The proposal is to rezone both properties to LC – Limited Commercial with a Conditional Overlay. The proposed Conditional Overlay would limit the LC zone district to those uses and standards (excluding setbacks) identified within the NC zone district, but would exclude the sign limitation as detailed in Section 20-0209.D.6 of the Land</p>			

Development Code.

The Zoning Change Criteria are listed below:

1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?

Staff is unaware of an error in the zoning map. However, staff does believe that conditions have changed in the area that would warrant the requested zone change.

Approximately a year ago, the city approved a zone change for a portion of the subject property from SR-3, Single Family to NC, Neighborhood Commercial after a long battle with the neighboring property owners that were opposed to the zone change. In addition, the Art and Learn retail facility located across the street at 1225 University Dr S was re-zoned LC, Limited Commercial with a Conditional Overlay that limited its uses to the following:

1. Land Uses shall be limited to allowable uses in the Neighborhood Commercial zoning district.
2. No outdoor storage or display of goods or merchandise is allowed.
3. The primary entrance shall be oriented to University Drive South or 13th Avenue and be pedestrian friendly in scale.
4. Drive-Through windows and drive-through uses shall be prohibited.
5. Freestanding signs shall be limited to monument signs. Monument sign shall be limited to 6 feet in height. A monument sign is defined as a sign that has its entire base ground mounted at the final grade level.
6. Dimensional standards shall follow the Limited Commercial requirements.
7. All new building construction shall be consistent scale and color as the existing development located at 1225 University South, using similar pitch in roofs and not taller than the existing building.

The petitioner is requesting the LC, Limited Commercial zone district classification in order to increase the amount of signage that he is currently allowed to have under the NC, Neighborhood Commercial zone district and to reduce the setback standards of the NC zone district. Based on the amount of traffic, recent zone changes, and expansion of the Art and Learn facility across the street, staff finds the requested change is justified since the previous zoning classification was established. **(Criteria Satisfied)**

2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?

Yes, the necessary utilities, services, facilities and programs are currently in place to serve this area. **(Criteria Satisfied)**

3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?

To date, staff has not received any written or verbal comments on the proposal. While staff does not have any quantitative data that would support the notion that the proposed zoning change would or would not have an adverse affect on the value of the properties within the neighborhood, staff is concerned this zoning change may have a negative impact on the adjacent neighborhood due to the scale of signage that is allowed in the LC, Limited Commercial zoning district.

LC SIGNAGE ALLOWS

LC allows 3 square feet of signage per linear front foot. Up to 25 feet in height within 25 feet of the property line.

Property at 1155 13th Ave (frontage is towards 13th Ave S): 150 linear front feet

Property at 1117 13th Ave (frontage is towards 13th Ave S): 50 linear front feet

Total: 200 linear front feet X 3 = 600 square feet of signage up to 25 feet in height.

NC SIGNAGE ALLOWS

Signs in the NC shall be limited to a maximum one (1) square foot of total aggregate sign area per 100 square feet of building coverage. All signage other than wall signs shall be limited in height to four (4) feet above ground level.

Property at 1155 13th Ave: 1050 square feet building coverage
 Property at 1117 13th Ave: 850 square feet building coverage
 Total: 1900 square feet/100 = 19 square feet of signage limited to 4 feet in height

In keeping with the recent approval of the Art and Learn facility across the street at 1225 University Dr S, staff suggests that any freestanding signage of the subject property should be limited to monument signs no greater than 6 feet in height. A monument sign is defined as a sign that has its entire base ground mounted at the final grade level. **(Criteria NOT Satisfied)**

4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?

The Growth Plan encourages the use of commercial zoning districts as a buffer between arterial roadways and residential land uses. As proposed, the petitioner retains all of the limitations of the NC, Neighborhood Commercial zone district with the exception of signage (refer to No. 3 above). Staff finds that the LC, Limited Commercial signage is not in keeping with the neighborhood plan and that greater emphasis on human scale should be incorporated into signage (i.e. monument style signage). Therefore, staff finds that the proposed zone change with Conditional Overlay is not consistent with the purpose of the LDC, the Growth Plan, and other adopted policies of the City. **(Criteria NOT Satisfied)**

Petitioner Proposed Conditional Overlay

The proposed Conditional Overlay would limit the LC zone district to those uses and standards identified within the NC zone district, but exclude the sign and setback limitations as detailed in Section 20-0209.D.(6 & 7) of the Land Development Code.

Staff Recommended Conditional Overlay

The proposed Conditional Overlay would limit the LC zone district to those uses and standards identified within the NC zone district, but exclude the sign and setback limitations as detailed in Section 20-0209.D.(6 & 7) of the Land Development Code to the following:

1. LC, Limited Commercial Sign Standards shall apply.
2. Freestanding signs shall be limited to monument signs. Monument sign shall be limited to 6 feet in height. A monument sign is defined as a sign that has its entire base ground mounted at the final grade level.

Staff Recommendation to Planning Commission on 11-12-08:

Suggested Motion "To accept the findings and recommendations of staff and hereby recommend to the City Commission denial of the zoning change on the basis that the review criteria of Section 20-0906.F (3 & 4) have not been met."

As alternative, if the limitations on freestanding signs are included in the Conditional Overlay.

Suggested Motion, "To accept the findings and recommendations of staff and hereby recommend to the City Commission approval of the zoning change and Conditional Overlay on the basis that the review criteria of Section 20-0906.F (1-4) have been met."

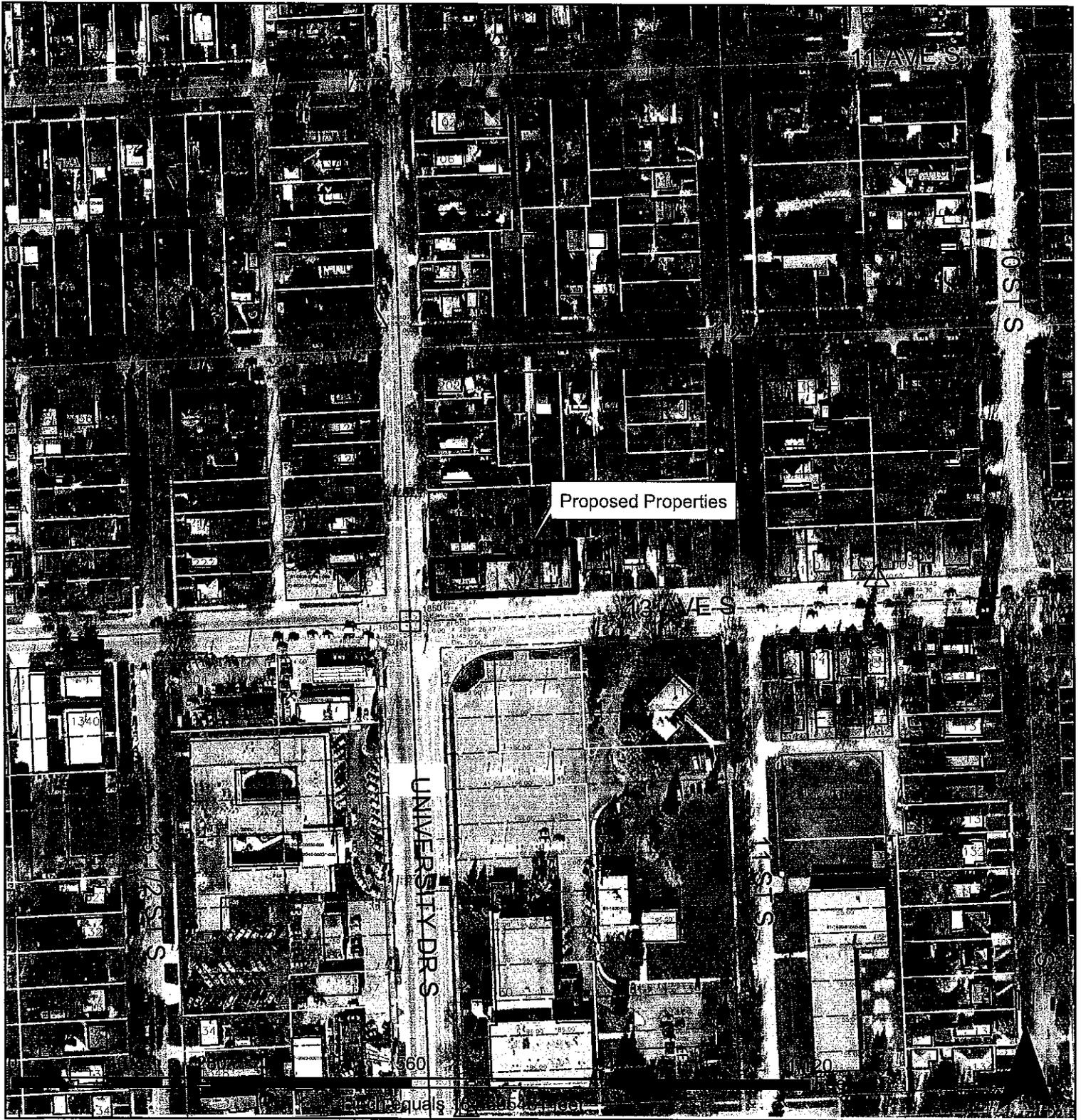
Planning Commission 11-12-08, as continued from 10-08-08

<p>Recommendation:</p>	<p>In a unanimous decision (6-0), the Planning Commission recommended approval to the City Commission of the proposed zone change, with an amended Conditional Overlay (see below), as the proposal complies with the Comprehensive Plan/Area Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.</p> <p>Amended Conditional Overlay The proposed Conditional Overlay would limit the LC zone district to those uses and standards identified within the NC zone district, but exclude the sign and setback limitations as detailed in Section 20-0209.D.(6 & 7) of the Land Development Code to the following:</p> <ol style="list-style-type: none"> 1. LC, Limited Commercial Sign Standards shall apply. 2. Freestanding signs shall be limited to monument signs. Monument sign shall be limited to 8.5 feet in height. A monument sign is defined as a sign that has its entire base ground mounted at the final grade level.
<p>Final Staff Recommendation:</p>	<p>Suggested Motion: "To accept the findings and recommendations of staff and the Planning Commission and hereby move to approve the zone change from Neighborhood Commercial (NC) to Limited Commercial (LC), with Conditional Overlay, as the proposal complies with the Comprehensive Plan/Area Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC."</p> <p>Conditional Overlay The uses and standards of this "LC", Limited Commercial, District shall be limited to uses, standards and additional standards of a "NC", Neighborhood Commercial, District as set forth in Section 20-0209 of the Land Development Code, except subparagraphs D.5 and D.6 thereof, and further subject to the following:</p> <ol style="list-style-type: none"> 1. Freestanding signs shall be limited to monument signs of a height no greater than 8-1/2 feet, measured from the ground level. A monument sign is defined as a sign in which the lowest portion of the sign itself, not including any pole or support, has its base at ground level, said ground level being at grade with the rest of the property. 2. The provisions of the Fargo Sign Code (as authorized pursuant to Section 25-0307 of the Fargo Municipal Code) for a "LC", Limited Commercial, zoning district shall apply.
<p>City Commission Decision:</p>	<p>11-17-08</p>

Zoning Change (NC to LC w/NC Overlay)

Erskines Addition

1155 13 Avenue S
& 1117 13 Avenue S



Fargo Planning Commission
October 8, 2008

Zoning Change (NC to LC w/NC Overlay)

Erskines Addition

1155 13 Avenue S
& 1117 13 Avenue S



Legend

AG	MR-2	LI	SR-3
DMU	MR-3	MHP	SR-4
GC	NC	MR-1	SR-5
GI	NO	City Limits	
GO	P/I	Proposed Property	
LC	SR-2		



Fargo Planning Commission
October 8, 2008

262

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN ERSKINES ADDITION TO THE CITY OF FARGO

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the proposed rezoning of certain parcels of land lying in Erskines Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on November 12, 2008; and,

WHEREAS, the rezoning changes were approved by the City Commission on November 17, 2008,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following described property:

The South 51 feet of Lots One (1), Two (2), Three (3), Four (4) and Five (5); the South 51 feet of the South 101 feet of the West 8.4 feet of Lot Six (6); the Southern 70 feet of the East 16.6 feet of Lot Six (6); all of Lot Seven (7); and the West 8.4 feet of Lot Eight (8), Block SS, Erskines Addition to the City of Fargo, Cass County, North Dakota,

is hereby rezoned from "NC", Neighborhood Commercial, District to "LC", Limited Commercial, District,

subject to a "CO", Conditional Overlay, District as follows:

The uses and standards of this "LC", Limited Commercial, District shall be limited to uses, standards and additional standards of a "NC", Neighborhood Commercial, District as set forth in Section 20-0209 of the Land Development Code, except subparagraphs D.5 and D6 thereof, and further subject to the following:

1. Freestanding signs shall be limited to monument signs of a height no greater than 8-1/2 feet, measured from the ground level. A monument sign is defined as a sign in which the lowest

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

portion of the sign itself, not including any pole or support, has its base at ground level, said ground level being at grade with the rest of the property.

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2. The provisions of the Fargo Sign Code (as authorized pursuant to Section 25-0307 of the Fargo Municipal Code) for a "LC", Limited Commercial, zoning district shall apply.

Section 2. This ordinance shall be in full force and effect from and after its passage and approval.

Dennis R. Walaker, Mayor

(SEAL)
Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage: